IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6352 of 1995
WITH
CIVIL APPLICATIONS NO.7030 of 2002 & 3909 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS
and
Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

JAGDISH U.JAISWAL AND ORS.
Versus
BALABHAI T.PATEL AND ORS.

Appearance:
1. First Appeal No. 6352 of 1995
Mr.Darshan Parikh for the appellants
MR DC Sejpal for respondents.

CORAM : MR.JUSTICE KSHITIJ R.VYAS
and
MR.JUSTICE H.K.RATHOD

Date of decision: 09/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE H.K.RATHOD)

1. The claimants have filed Civil Applications No. 7030 of 2002 and 3909 of 1997 with a prayer to disburse amounts to them. During the course of hearing of both these Civil Applications, respective advocates for the parties have argued the matter at length and, therefore, considering the submissions of both the learned advocates and with the consent of both the learned advocates, the main First Appeal No.6352 of 1995 is taken up for final hearing today.

2. The brief facts of the present appeal are as under:

The minor son of the claimants Vinubhai died in a motor vehicular accident which occurred on 27.1.1990 at about 7.30 a.m.near Malpara Bus Stand on Dhasa Gadhda State Highway in Bhavnagar District. On the date of the incident, the deceased was going to his school along with other students at about 7.30 a.m. When he reached near Malpara Bus Stand, the opponent no.1 came there by driving his truck no. GTZ 4688 in a rash and negligent manner and run over the minor Vinubhai, as a result of which, the deceased died on the spot. Therefore, the claimants filed Motor Accident Claim Petition for recovery of compensation of Rs. 1.5 lacs under section 110-A of the Motor Vehicles Act.

3. Before the Tribunal, the opponent no.1 filed his written statement vide Ex. 15 and denied the averments made in the claim petition. Similarly, the opponent no.3 also filed written statement at Ex. 27 and denied the averments made by the claimants in their petition. Thereafter, the Tribunal framed issues vide Ex. 31 on 29.10.1991. Before the Tribunal, oral evidence of claimant Balabhai Trikambhai was recorded at Ex. 48 and certain documentary evidence was produced by the respective parties. Before the Tribunal, complaint was produced at Ex. 34, panchanama of the scene of offence Ex.35, inquest panchanama Ex.36, birthdate certificate of the deceased Ex.37, school leaving certificate of the deceased Ex.38, death certificate of the deceased Ex.39, Marksheet of Std. 7 of the deceased Ex.40, Marksheet of Sanskrit Examination Certificate Ex.41, Six photographs of the deceased Ex.42, driving licence of Jagdishbhai Ex.43, certificate of truck registration Ex.44 and copy of insurance policy at Ex.45. After considering oral and documentary evidence, the Tribunal partly allowed the claim petition with a direction to the opponents to pay jointly and severally a sum of Rs. 1,22,000/- to the claimants together with interest at the rate of 15% per

annum from the date of the petition till realisation with proportionate costs. The Tribunal further clarified that if the said amount is deposited in the Tribunal within a period of four months from the date of the order, the opponents shall be at liberty to deposit the amount with interest at the rate of 12% per annum from the date of the petition till realisation. The Tribunal further directed that on realisation, first the deficit court fees, if any, and the amount of interim compensation, if paid, shall be deducted and thereafter 30% amount shall be paid to the claimant no.1 by account payee cheque only and remaining entire amount shall be invested in FD with any nationalised bank for a period of seven years in the joint names of both the claimants. The Tribunal also directed the concerned bank not to encash the FDR and not to float any loan or advance or create any encumbrances against the said FDR without prior permission of the Tribunal though liberty was given by the Tribunal to the claimants to withdraw periodical interest accrued from time to time on the said FDR.

4. Mr.Parikh, learned advocate appearing for the appellants has raised the only contention about multiplier of 17 applied by the Tribunal by considering the age of the deceased. He submitted that while applying multiplier, the age of the parents has not been taken into consideration by the Tribunal. Learned advocate Mr. Sejpal appearing on behalf of the respondents has submitted that the Tribunal has rightly applied multiplier of 17 and no error has been committed by the Tribunal.

5. We have considered the submissions advanced by learned advocates for both the parties.

6. The Tribunal while assessing dependency loss of the claimants at Rs. 500/- per month which comes to Rs. 6000/- per year, observed that according to the claimants, the deceased was helping the claimants in their agricultural work and was contributing the family to the tune of Rs. 500/- per month and that the claimants have two sons of which the deceased was the youngest one and by the death of youngest unmarried son Vinubhai, now the claimants have only one son and that by the death of the deceased, not only his marriage prospects are ruined, but also the claimants have lost their support which otherwise, they would have got at their evening phase of life. The Tribunal has applied multiplier of 17 keeping in mind the young age of the deceased, but the Tribunal has not considered the age of the parents being 45 and 40 years. The Apex Court has

taken a view that at the time of applying multiplier, it is the duty of the Tribunal to consider the age of the deceased as well as age of the parents. In this case, the Tribunal has not considered the age of the parents and, therefore, considering this fact, in our opinion, multiplier of 17 is on the higher side and, therefore, considering the age of the deceased and the age of the parents, we reduce the multiplier of 17 to 15 and accordingly considering the dependency loss of Rs.6000/per annum to the claimants, by applying multiplier of 15, the amount would come to Rs. 90000/under the head of future loss of income to the claimants. The claimants are also entitled to Rs. 20,000/- under the head of loss of estate.

7. The Tribunal has awarded the amount of Rs. 1,22,000/- with interest at the rate of 15% p.a. with a penal clause that if the said amount is paid within four months from the date of the award, the opponents shall pay interest at the rate of 12% p.a. on the amount of compensation. In our opinion, such penal clause is little harsh on the appellant company in light of the rate of interest prevailing at present. Therefore, we delete this penal condition of imposing 15% interest upon the appellant on total amount of compensation. The appellants are, therefore, required to pay interest at the rate of 12% per annum on the total amount of compensation.

8. In the result, the present appeal is partly allowed. The multiplier of 17 is substituted by multiplier of 15 and applying the said multiplier of 15, the amount under the head of future loss of income to the claimants would come to Rs. 90,000/-. Moreover, the claimants are also held entitled to Rs. 20,000/- towards loss of estate. Thus, in all, the claimants are entitled to compensation of Rs. 1,10,000/with interest at the rate of 12% per annum from the date of filing of the petition till realisation. The rest of the directions of the Tribunal shall remain in tact. The award passed by the Tribunal accordingly stands modified.

In view of the fact that the First Appeal is partly allowed, Civil Applications No.7030 of 2002 and 3909 of 1997 do not survive and the same accordingly stand disposed of.

(Kshitij R.Vyas,J.)

(H.K.Rathod,J.)

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